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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability  
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;  
MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond  
Swope, Dept. 23**

**DEFENDANT FACEBOOK, INC.'S  
OPPOSITION TO BIRNBAUM & GODKIN,  
LLP'S MARCH 22, 2019 MOTION TO SEAL**

Date: July 19, 2019  
Time: 2:00 p.m.  
Dept: 23 (Complex Civil Litigation)  
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015

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1   **I.     INTRODUCTION**

2           Birnbaum & Godkin’s (“B&G”) March 22 sealing motion is the third misguided attempt to mask  
3 the involvement of one of its retained consultants in this action.<sup>1</sup> Details of the alleged expert’s work  
4 have appeared in public filings. The parties have discussed him on the record in open court, and this  
5 Court has issued orders naming him and requiring that he file sworn declarations regarding his conduct.  
6 B&G now seeks to seal information related to this consultant on the basis of unspecified “harm of  
7 disclosure” of “identity and personal identifying information.”<sup>2</sup> See Mem. of P. & A. in Supp. of Mot. to  
8 Seal (“Mot.”) at 2 (Mar. 22, 2019). But **B&G itself** named this consultant in its motion to seal. *Id.* For  
9 that and the reasons that follow, the Court must reject B&G’s futile efforts to cover up Six4Three’s  
10 consultant’s role in this action.

11   **II.    ARGUMENT**

12           **A.     The Court Should Not Seal Information in the Declaration of Six4Three’s Retained**  
13           **Consultant and Its Exhibit That Identifies the Declarant.**

14           B&G first asks this Court to seal redacted portions of a declaration signed on March 20, 2019 (the  
15 “March 20 Declaration”). The declaration’s contents—and declarant—are obvious: The declaration  
16 states that it is a “response to Case Management Order No. 19, ¶ 3.” Decl. of Zachary G.F Abrahamson  
17 in Opp’n to B&G’s March 22 Mot. to Seal submitted herewith (“Abrahamson Decl.”) Ex. 1, March 20  
18 Decl. Paragraph 3 of Case Management Order No. 19 expressly names the retained consultant by name.  
19 Abrahamson Decl. Ex. 2, CMO 19 ¶ 3 (Mar. 1, 2019). Critically, B&G itself removed any doubt about  
20 the declarant’s identity. When B&G moved to seal the declaration at issue on March 22, it publicly  
21 revealed in that motion the identity of the declarant. Mot. at 2:6. That single revelation defeats the  
22 purpose of redactions intended to protect “**the identity** and personal identifying information of one of  
23 Plaintiff’s non-testifying experts.” *Id.* at 2:8–10 (emphasis added). Relatedly, B&G cannot claim any  
24 “harm of disclosure” when **B&G itself** publicly named him. See *id.* at 3:5–7. Indeed, for months, the  
25 public docket in this case has identified the Six4Three consultant. If B&G actually thought that

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27 <sup>1</sup> As with its other Oppositions to B&G’s motions to seal, Facebook withholds the name of Six4Three’s  
28 retained experts out of an abundance of caution, despite the fact that they have been publicly identified  
by name on multiple occasions.

<sup>2</sup> Facebook does not oppose redacting Six4Three’s retained consultant’s contact information.

disclosure “would cause harm to the individual,” then B&G should have long ago addressed the docket’s disclosure of him as the declarant.

**B. The Court Should Not Seal the Redacted Portions of the Exhibit to the March 20 Declaration.**

B&G’s motion also asks the Court to seal redactions to the Exhibit to the March 20 Declaration (hereinafter, “March 20 Decl. Ex.”). As stated above, the public nature of that request requires the Court to reject any redactions made to protect the declarant’s identity, which B&G itself revealed. *See supra*. Moreover, like the Declaration itself, the subjects of various redactions to the March 20 Declaration are easily discerned by reference to other public filings. For example, *compare*:

- March 20 Decl. Ex. at 001 *with* Decl. of Zachary G.F Abrahamson in Opp’n to B&G.’s March 18 Mot. to Seal submitted herewith (“Abrahamson Decl.”) Ex. 3, Decl. of David S. Godkin in Resp. to CMO No. 19, Redacted for Public Filing (“March 18 Redacted Decl.”) ¶ 10.
- March 20 Decl. Ex. at 002 *with* Abrahamson Decl. Ex. 4, Decl. of David S. Godkin in Supp. of Resp. to Def.’s *Ex Parte* Appl. for Order Enforcing Stipulated Protective Order ¶ 2 (Feb. 28, 2019) (“Feb. 28, 2019 Godkin Decl.”).
- March 20 Decl. Ex. at 042 *with* Abrahamson Decl. Ex. 4, Feb. 28, 2019 Godkin Decl. ¶ 3.
- March 20 Decl. Ex. at 043 *with* Abrahamson Decl. Ex. 5, Facebook’s *Ex Parte* Application for an Order Enforcing the Stipulated Protective Order at 7:7–8 (Feb. 25, 2019) (“Facebook’s Feb. 25, 2019 *Ex Parte*”).
- March 20 Decl. Ex. at 048 *with* Abrahamson Decl. Ex. 5, Facebook’s Feb. 25, 2019 *Ex Parte* at 6:16–19.

As the public docket, B&G’s motion, and this basic review of other public filings make clear, the exhibit redactions correspond to the declaration of Six4Three’s retained consultant, who has been publicly named on multiple occasions. Any attempt to seal those redactions to cloak his identity is futile and misguided.

In addition, sealing these materials would leave the parties and Court adrift as to how to treat public filings that identify Six4Three’s consultant. For example, would Facebook have to lodge conditionally under seal any filing that identifies him based on Mr. Godkin’s public February 28

1 Declaration, B&G's non-confidential document production, public hearing transcripts, or the Court's  
2 March 15 Order?<sup>3</sup>

3 **III. CONCLUSION**

4 For the foregoing reasons, B&G's March 22 motion to seal should be DENIED in part.

5  
6 Dated: July 8, 2019

DURIE TANGRI LLP

7  
8 By: \_\_\_\_\_



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28 <sup>3</sup> In addition to information identifying Six4Three's consultant, B&G's motion asks that the Court seal information about certain third parties connected to these proceedings. *See generally* Exhibit at 035–036, 042. Facebook does not oppose redacting these third parties' identifying information.

1 **PROOF OF SERVICE**

2 I am employed in San Francisco County, State of California, in the office of a member of the bar  
3 of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a  
4 party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

5 On July 8, 2019, I served the following documents in the manner described below:

6 **DEFENDANT FACEBOOK, INC.'S OPPOSITION TO BIRNBAUM & GODKIN,  
7 LLP'S MARCH 22, 2019 MOTION TO SEAL**

8 ☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business  
9 practice of Durie Tangri LLP for collection and processing of correspondence for overnight  
10 delivery, and I caused such document(s) described herein to be deposited for delivery to a  
11 facility regularly maintained by Federal Express for overnight delivery.

12 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through  
13 Durie Tangri's electronic mail system from cortega@durietangri.com to the email  
14 addresses set forth below.

15 On the following part(ies) in this action:

16 **VIA OVERNIGHT MAIL & EMAIL**

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9                   *Attorney for Gross & Klein LLP*

10                  I declare under penalty of perjury under the laws of the United States of America that the  
11                  foregoing is true and correct. Executed on July 8, 2019, at San Francisco, California.

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Christina Ortega